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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.654 OF 2007
WITH
COMPANY APPLICATION NO.859 OF 2006

Onaway Industries Limited Petitioner
versus
Kapoor Glass (I) Pvt.Ltd. Respondent

Ajay Fernandes i/y Pardiwala & Co. for petitioner

None for respondent.

CORAM : A.M.KHANWILKAR, J.

DATE : 28th November 2007

PC :

1. Company Application not on board. Upon mentioning taken on board and heard along with Company Petition No.654 of 2007 which is listed today.

2. Although the respondents have been duly served, none appears. No reply has been filed to oppose these proceedings. The petitioners' claim is based on goods sold, delivered and supplied to the respondent company as per their demand from time to time. According to the petitioners, the

respondent company made part payment of Rs.5.00 lakh (Rs.Five lakh only) towards outstanding bills. The respondent company has acknowledged its liability to pay the amount as demanded by the petitioner, as can be discerned from their letter dated 25th October 2005, Exhibit-D-1, Page 47. As the respondent company failed to pay the further balance amount, the petitioners kept on reminding the respondent for payment and eventually sent statutory notice on 18th December 2006. The statutory notice was duly served on the respondent company as is seen from the acknowledgement produced at Exhibit-K, Page 63. Inspite of statutory notice, no further payment has been received by the petitioners nor any explanation has been offered by the respondent company. As a consequence, the petitioner has been driven to file present petition on 6th July 2007.

3. As mentioned earlier, even the Company Petition as well as the Company Application has been duly served on the respondent. The respondent has not bothered to appear or file any reply affidavit to controvert the case made out by the petitioner, as stated on affidavit and supported by documentary evidence. In the

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circumstances, I have no difficulty to accept the petitioners' claim that the respondent has failed and neglected to pay the balance outstanding amount which is far exceeding Rs.500/-. In other words, it is obvious that the respondent is unable to pay the dues of the petitioner company. Accordingly, this petition deserves to be admitted.

4. Hence, admit. The petitioner shall advertise the petition in two local newspapers, namely, "Free Press Journal", "Navshakti" and in the Maharashtra Government Gazette. The petitioner shall deposit an amount of Rs.10,000/- (Rs.Ten Thousand only) with the Registrar (O.S.)/ Prothonotary & Senior Master towards the publication charges within three weeks from today with intimation to the Company Registrar, failing which the petition shall stand dismissed for non prosecution without further reference to the Court.

5. Insofar as Company Application is concerned, in my opinion, if the relief in terms of prayer clause (b) is granted, that would secure the interest of the petitioner and also preserve the property of the company in respect of which I

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have already directed to advertise admission of the petition. Accordingly, interim relief in terms of prayer clause (b) of the Company Application is granted which will continue till disposal of the Company Petition. The same reads thus :-

> "(b) that pending the hearing and final disposal of this Petition, the Company by itself, its directors, officers, servants and agents be restrained by an order of injunction of this Hon'ble Court from in any manner disposing of, encumbering, allowing, transferring or parting with possession of any of the assets of the company"

6. Company Application disposed of in the above terms.

(A.M.KHANWILKAR, J.)